

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

<b>LUIS ARTURO AGUILAR</b> <b>ID #10143184-8D,</b> <b>Plaintiff,</b> <b>v.</b> <b>JAMES PORIS, ET AL.,</b> <b>Defendants.</b>	§ § § § § § §	<b>C.A. NO. C-08-298</b>
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<b>LUIS ARTURO AGUILAR</b> <b>ID #10143184-8D,</b> <b>Plaintiff,</b> <b>v.</b> <b>NUECES COUNTY,</b> <b>Defendants.</b>	§ § § § § § §	<b>C.A. NO. C-08-392</b>
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**ORDER CONSOLIDATING CASES**

For the reasons stated herein, the above-references cases are consolidated.

**I. Background.**

Plaintiff is an inmate in the Nueces County Jail. On September 8, 2008, he filed the instant action naming the Nueces County Jail and another inmate, James Poris, as defendants. Plaintiff alleged that on October 8, 2008, James Poris assaulted him in his cell after being denied his medications. Plaintiff claimed that the Nueces County Jail was deliberately indifferent to his health and safety because it had reason to know that Poris was a violent inmate.

Following an October 22, 2008 evidentiary hearing, plaintiff's claims against Poris were dismissed because he is not a state actor.<sup>1</sup> (See D.E, 20). Nueces County was substituted in place of the Jail as the proper defendant, and the Jail was dismissed. Id. Service was ordered on Nueces County. (D.E. 21).

On December 17, 2008, plaintiff filed an identical complaint to the one filed in this action, and it was assigned C.A. No. C-08-392.

## **II. Discussion.**

Rule 42(a), Fed. R. Civ. P., provides:

**(a) Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation should be granted if there are common questions of law or fact tying the cases together. 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 2382 (2d ed.1994).

Here, the action filed on December 17, 2008 in C.A. No. C-08-392 is identical to the facts alleged in this case, C.A. C-08-298. Indeed, except for a difference in the type font used, plaintiff's allegations read the same in each action. It is unclear why plaintiff thought it necessary to file the subsequent action, but perhaps the language issue created

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<sup>1</sup> Plaintiff's complaint was written in both English and Spanish. Plaintiff testified at the evidentiary hearing with the aid of an interpreter.

some misunderstanding, or perhaps plaintiff believed he needed to file a new complaint because of the addition of Nueces County as a defendant.

### **III. Conclusion.**

Because the two cases involve the same questions of fact and law, they are hereby consolidated under Civil Action No. C-08-298. All future pleadings shall be filed in Civil Action C-08-298. For statistical purposes, the Clerk shall reassign C-08-392 to Magistrate Judge Brian Owsley.

Plaintiff's application for leave to proceed *in forma pauperis* (D.E. 2 in C.A. C-08-392) shall be terminated as moot, because plaintiff has already been assessed a filing fee in C.A. C-08-298.

ORDERED this 15<sup>th</sup> day of January, 2009.

  
B. JANICE ELLINGTON  
UNITED STATES MAGISTRATE JUDGE